

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE: ) Case No. 19-MD-2875-RBK-JS  
 )  
VALSARTAN PRODUCTS LIABILITY )  
LITIGATION )  
 ) Camden, NJ  
 ) November 6, 2019  
-----) 4:13 a.m.

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE  
BEFORE THE HONORABLE JOEL SCHNEIDER  
UNITED STATES MAGISTRATE JUDGE

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Colloquy

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1 (The following conference was heard 4:13 p.m.)

2 THE COURT: Excuse me for holding you up. This is  
3 Judge Schneider. We're on the record in In Re: Valsartan MDL,  
4 19-MD-2875. Can we have the names of counsel on the phone  
5 starting with plaintiffs.

6 MR. SLATER: Good morning, Your Honor, Adam Slater  
7 for the plaintiffs.

8 MR. HONIK: Ruben Honik.

9 MR. NIGH: Daniel Nigh.

10 MS. WHITELY: Good afternoon. Conlee Whitely.

11 MR. PAREKH: Good afternoon. Behram Parekh.

12 MR. STANOCH: Good afternoon. David Stanoch.

13 MS. GOLDENBERG: This is Marlene Goldenberg.

14 THE COURT: Okay, it sounds like that's the  
15 plaintiffs' team. For the defense?

16 (Pause in proceedings)

17 THE COURT: Defendant?

18 MR. REEFER: Jason Reefer for Mylan Pharmaceuticals.

19 MR. RUBENSTEIN: Brian Rubenstein for Teva.

20 (Pause in proceedings)

21 THE COURT: Defendants, enter your appearances,  
22 please.

23 UNIDENTIFIED SPEAKER: You have to press star-1 to  
24 unmute.

25 MR. GOLDBERG: Good afternoon, Judge. This is Seth

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1 Goldberg for the defendants.

2 THE COURT: Anyone else besides the three of you?

3 (Pause in proceedings)

4 THE COURT: Okay. Counsel, I have your letters,  
5 thank you very much, and I briefly skimmed the macro briefs  
6 that came in. Before we get to the issues in your agenda, I  
7 just thought it would be helpful to go over the chronology  
8 because it looks like there's going to be a lot of work done  
9 over the next month or so, and I want to make sure we're on the  
10 same page. So bear with me, I'm going to read to you what my  
11 understanding of the chronology is and you can tell me if we're  
12 all on the same page.

13 Yesterday the opening briefs were filed regarding the  
14 macro discovery issues that the Court identified in its order.  
15 The responses to the opening briefs are due on November 18th,  
16 and on November 20 we're going to have oral arguments on the  
17 macro issues, and the Court is going to use its best efforts to  
18 rule on those issues at the conference.

19 In addition, also due on November 20 is the final  
20 version of defendants' fact sheets. On December 6 -- I'm  
21 sorry, on November 27, the parties' letter briefs regarding all  
22 discovery disputes are due, ESI and Rule 34 issues. The  
23 responsive letter briefs are due on December 6.

24 And on December 11, the goal is to argue and  
25 hopefully, absent unforeseen circumstances, decide all

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1 outstanding discovery disputes, and then at that time or  
2 shortly thereafter, the initial custodian list and search term  
3 list will be finalized, the objections to the Rule 34 document  
4 requests will be finalized, and we'll set a deadline for the  
5 production of the responsive ESI and documents.

6 So that -- that's the chronology the Court has. Does  
7 anyone have anything different or were they under a different  
8 impression about where we are?

9 (Pause in proceedings)

10 THE COURT: Great. Fantastic. Okay, why don't we go  
11 through the discovery letters. I have Mr. Goldberg's -- well,  
12 let me start with -- well, let's do this easier. Let's start  
13 easy to hard. Defendants' fact sheet I guess we have to  
14 clarify because this issue overlaps a couple of the issues,  
15 whether the fact sheet is going to be directed to just the API  
16 and finished dose manufacturing defendants, or whether it's  
17 also going to be directed to the retailers and  
18 wholesalers/repackagers and pharmacies.

19 I know the respective parties' positions on that from  
20 the letters. In terms of the draft that's been exchanged, has  
21 it only been directed to the API and finished dose  
22 manufacturing defendants?

23 MR. GOLDBERG: No, it was directed to all defendants.  
24 Your Honor, this is Seth Goldberg. If I could give you --  
25 remind Your Honor of the -- the chronology just with respect to

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1       the defendant fact sheet to -- which may be helpful here.  
2       Early in the spring or early in the summer, the Court had  
3       ordered the first iteration of the defendant fact sheet to be  
4       produced, and the plaintiffs produced that first version which  
5       did not delineate at all between any levels of the supply  
6       chain. It was just a series of requests, not -- not directed  
7       to any specific levels of the supply chain.

8                  The Court then set a deadline for September for  
9       defendants to respond and to -- to that defendant fact sheet,  
10      and we did in mid September I believe, and we proposed a  
11      defendant fact sheet that was focused exclusively on the  
12      manufacturing defendants because based on the discussions that  
13      the parties were having with the Court with respect to core  
14      discovery which was limited to the manufacturing defendants,  
15      and the document requests were limited to the manufacturing  
16      defendants, and comments that we had with the -- with -- in  
17      conferences with Your Honor to the effect that the discovery  
18      relating to the downstream levels of the supply chain was not  
19      as pertinent to the liability issues, our draft of the  
20      defendant fact sheet in mid September was focused on the  
21      manufacturing defendants.

22                  In conference with Your Honor in September about that  
23      defendant fact sheet, Your Honor suggested that if plaintiffs  
24      wanted to have all of the defendants be in the defendant fact  
25      sheet, then that was -- that was appropriate and plaintiffs

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1 should provide a revised defendant fact sheet accordingly. On  
2 October 12, plaintiffs provided a fact sheet and for the first  
3 time, delineated the defendant fact sheet by supply chain  
4 level. So and what has happened since is basically there are  
5 now, you know, separate tracts of meet and confers on the  
6 defendant fact sheet.

7 The manufacturing defendants are having a meet and  
8 confer process with plaintiffs as to the defendant fact sheet  
9 questions that focus on the manufacturing defendants, and the  
10 retailers are having -- my understanding is have started a  
11 process to have a meet and confer -- you know, instead of meet  
12 and confers with plaintiffs on the retailer-specific areas --  
13 you know, a retailer-specific defendant fact sheet, and the  
14 reason is, you know, I mean not only that -- that chronology,  
15 but the kinds of information that these different levels of the  
16 supply chain would produce are -- are categorically different.

17 And so after getting that October 12th defendant fact  
18 sheet, the retailers took it upon themselves to reach out to  
19 plaintiffs and to begin the process of a meet and confer on the  
20 retailer part of the fact sheet, and that process is ongoing.

21 THE COURT: Can I ask -- can I butt in just for a  
22 couple of seconds, Mr. Goldberg? Real quickly, are the three  
23 -- are there only three other categories of defendants? One,  
24 retailers; two, wholesalers/repackaging defendants; and three,  
25 pharmacies?

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1                   MR. GOLDBERG: I believe -- I believe -- yeah, I  
2 believe that -- I mean, I think the way you could -- you could  
3 slice it is to say that you've got the manufacturing defendants  
4 as one category, and within that you have your API and your --  
5 your finished dose manufacturers.

6                   You have kind of a middle category which are the  
7 wholesalers, distributors and repackagers. And then you have a  
8 third category which are the pharmacy defendants, which we've  
9 been referring to as -- as the retailer defendants.

10                  THE COURT: Are there multiple parties in the other  
11 two categories -- wholesalers, distributors, repackagers as one  
12 category, and pharmacies in another? Is it just one party or  
13 two or are there multiple parties?

14                  MR. GOLDBERG: Yeah, there are multiple parties in  
15 each of these three categories. You know, there are -- from  
16 the repackager distributor standpoint, there are at least, you  
17 know, I would say between five and ten in this category. The  
18 pharmacy category has expanded quite a bit over the past few  
19 months.

20                  At the early stages of this litigation, there were  
21 one or two major pharmacies and Walgreens and Walmart and as --  
22 as the litigation has progressed, there are now I'd say  
23 another, you know, probably between five and ten very large  
24 retail pharmacy chains. And of course the -- the quality of  
25 the information that those pharmacies have, how they keep that

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1 information and what that information can be used for with  
2 respect to this litigation is really vastly different from the  
3 manufacturing-type information that the manufacturing  
4 defendants have.

5 And, you know, the wholesale distributor/repackager  
6 information likewise is going to be of a different quality than  
7 the information that the other two groups have. So it makes  
8 sense that, you know, there are really separate tracts of  
9 discussion with plaintiffs on the kinds of information that  
10 might be necessary to this case from these different tracts.

11 THE COURT: Mr. -- let me make --

12 MR. GOLDBERG: And --

13 THE COURT: Let me butt in here. Mr. Slater, what  
14 would you think --

15 MR. GOLDBERG: Yes, Judge.

16 THE COURT: What would you think of this suggestion.  
17 Okay, first, discovery directed to these two other categories  
18 of defendants is unquestionably relevant to the case and  
19 plaintiffs are not going to be barred from conducting relevant  
20 discovery.

21 It's not only relevant to probably ultimate liability  
22 issues and economic damage claims, but I believe it's also  
23 going to be relevant to -- and I said this before, class  
24 certification issues, ascertainability, management -- issues of  
25 that sort. So you don't have to argue that you're entitled to

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1       this discovery. By the chronology that I gave, we have a lot  
2 to do between now and December 11.

3           As relevant as the discovery is as to these two  
4 categories, it really can't be disputed that the more important  
5 discovery issues are related to the manufacturing defendants,  
6 API and finished dose.

7           What I would suggest we do is let's focus all of our  
8 efforts between now and December 11 on the manufacturing  
9 defendants. A lot of what we decide on the macro issues, the  
10 ESI and Rule 34 issues, will inform what happens with the  
11 wholesalers and the pharmacies, and why don't we say between  
12 December 11, whatever we can get done and the next January  
13 meeting, then we will immediately turn to those other two  
14 categories of defendants.

15           I haven't -- I just wonder if it makes sense because  
16 we are -- we do have a lot of material significant work to do  
17 in the next month if we just put these two categories aside  
18 with the assurances that they're going to be addressed in  
19 January.

20           MR. SLATER: I think that that's -- with one  
21 exception, I think that's basically how we are proceeding, the  
22 only exception is the defendant fact sheet, and I think that  
23 including those two categories of defendant -- of the  
24 defendants' fact sheet really shouldn't be a problem and  
25 shouldn't really create a great deal of effort, and I think

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1 it's also -- it does create problems for us as the fact sheets  
2 start to get exchanged if we don't have responses from the --  
3 the other groups -- I'll call them the  
4 distributor/repackagers/wholesaler group versus the  
5 retailer/pharmacy group because we're -- we're expecting  
6 especially with regard to the retailers that information that  
7 they will provide will, from our understanding, likely be very  
8 important to help the manufacturing defendants to be able to  
9 actually respond to the defendant fact sheet.

10 And I -- I know -- I think Daniel's on -- Mr. Nigh's  
11 on the phone, I'd ask maybe if he -- if you want more  
12 explanation on that, he could give you a little more detail.  
13 It ultimately looks that there's going to be cross-referencing  
14 to try to figure out which -- which batch is which lot, where  
15 it came from, when it was manufactured.

16 And we -- our understanding is we're going to need  
17 information from the lower further along levels of the supply  
18 chain to help inform the manufacturing defendants to provide --

19 THE COURT: Right.

20 MR. SLATER: -- information about --

21 THE COURT: Right.

22 MR. SLATER: -- the relevant factors and lots to each  
23 plaintiff.

24 THE COURT: We don't have to argument relevancy.  
25 There's no question --

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1 MR. SLATER: Right, right.

2 THE COURT: -- it's relevant. I'm looking at the  
3 practicality of the situation. The Court's order had said that  
4 the defendant fact sheets have to be finalized by November 20.  
5 I think it's a heavy lift to have to be able to get these other  
6 two categories finalized by November 20.

7 The manufacturing defendants are clearly the most  
8 important, and I wonder -- I just think it would be better if  
9 we could have one fact sheet for the API and finished dose  
10 manufacturers, and then we'll have another fact sheet to be  
11 entered in January for the other two categories of defendants.

12 Yes, you won't get the information at the same time,  
13 but it essentially will be contemporaneous and you're going to  
14 have more than enough documents to digest, so I don't really  
15 see any --

16 MR. SLATER: Your Honor --

17 THE COURT: -- prejudice to the plaintiffs and I  
18 don't know if anyone can reasonably argue that there's so much  
19 work to do in the next month we should really focus on the  
20 manufacturing defendants.

21 UNIDENTIFIED SPEAKER: (Inaudible).

22 MR. SLATER: Judge, I'm not -- I'm not -- let me just  
23 talk for one second, Daniel, and I'll hand off to you.  
24 I'm not pushing back a little hard on it, Judge, I'm saying  
25 what we -- what we understand and I think that it may even be

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1       that once again we'll explain -- the next question may be for  
2 the manufacturing defendants, is that correct, that you need  
3 this information to provide your responses, but I'll hand off  
4 to Daniel right now.

5                   MR. NIGH: Yeah, the defense fact sheets are -- are  
6 for that individual plaintiff and the medication they took and  
7 the story behind that medication. So my understanding is the  
8 manufacturers -- right now the manufacturers want to only  
9 respond based on lot and batch numbers that the plaintiff  
10 provide in their PFS.

11                  That -- that's not really that helpful for us because  
12 we don't have lot and batch numbers often times whereas the  
13 pharmacies have the lot and batch numbers. So the structure  
14 really would be that the manufacturers in order to be able to  
15 respond about the story about the medication taken by that  
16 plaintiff specifically, they really have to have the  
17 information from the pharmacies first, you know, before they  
18 can respond to that information. That's the structure that we  
19 have.

20                  I mean, I agree it's a heavy list of a lot of  
21 information that we've got to be dealing with in the meantime,  
22 but if anything, I think if we're going to -- if we  
23 -- if the direction from the Court is to -- you know, to put  
24 off that, then I would ask that we put off the whole defense  
25 fact sheet in negotiating it until the -- until the January

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1 date, because frankly until we have the information from the  
2 pharmacies about the lot and batch number for that individual  
3 client, the manufacturers can't respond to that specific lot  
4 and batch number --

5 MR. SLATER: Correct.

6 MR. NIGH: -- for that client.

7 THE COURT: Well, I have a --

8 UNIDENTIFIED SPEAKER: YOUR HONOR --

9 THE COURT: -- I have a feeling we're not going to  
10 have an objection from the manufacturers to put off the fact  
11 sheet until January, but let's hear from them.

12 MR. GOLDBERG: Well, that's right. I mean, if that's  
13 -- if that's something that the Court would consider, yeah I --  
14 of course we wouldn't. There are a lot of other issues that we  
15 are negotiating about. I mean, we've got 122 document requests  
16 to negotiate about, as well as 422 search terms.

17 And those issues will also -- you know, be -- be  
18 coming up for briefing, so if the Court were inclined to push  
19 the defendant fact sheet, I -- I agree, I don't think  
20 defendants will object to that. It might make the other  
21 discussions more productive.

22 THE COURT: Mr. Slater, for the plaintiffs, do I take  
23 it there's no objection given the trade-off or the short delay,  
24 but we'll finalize all the defendants fact sheets in January?

25 MR. SLATER: I think that's fine. I just -- I just

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1 want to, you know, protect us in terms of, you know, what our  
2 obligations are going to be and, you know, that -- that we're  
3 going to get the defense fact sheets responded to in some  
4 reasonable time after the plaintiff fact sheets are going to be  
5 served.

6 Maybe we can extend the deadline to respond to those  
7 since there's not going to be anything pressing, that the  
8 defense respond to their fact sheet, and I think also would be  
9 helpful if the defense can tell us now if the manufacturers, if  
10 they agree with us that they need information from the -- the  
11 retailers at the very least in order to respond, that would be  
12 helpful.

13 So again, there's plenty going on. Just as long as  
14 we do things in a -- in a fashion that -- you know, that is  
15 balanced to both sides, I have no problem with that. There's  
16 clearly enough work to do.

17 THE COURT: Okay, so let's do this then. Let's --  
18 I'll work out the dates. I think we're getting together in a  
19 week or so. We'll have to talk about dates for meetings in  
20 January, February, et cetera. I'll talk to Judge Kugler. But  
21 we'll target that we're going to finalize all -- there will be  
22 fact sheets for all defendants.

23 We'll have one for the API and finished dose  
24 defendants, and we'll have one for all the other defendants,  
25 but probably will be broken into categories. We're going to

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1 finalize that in January and I guess we should talk about  
2 whether there are also going to be Rule 34 document requests to  
3 the other two categories. Plaintiffs?

4 MR. SLATER: I would think definitely.

5 THE COURT: Okay. So let's --

6 MR. GOLDBERG: Your Honor -- Your Honor, this is --

7 THE COURT: Mr. Goldberg, we're not going to limit  
8 those defendants to just the fact sheets, but the proviso is  
9 that I would not expect that the document requests to the other  
10 two categories will be nearly as extensive as the ones to the  
11 manufacturing defendants.

12 And you can be rest assured that there's not going to  
13 be 122 document requests of Walmart or Walgreens. We're going  
14 to focus on just the relevant issues for I guess plaintiffs  
15 economic model, the ascertainability issue. I don't know what  
16 else those parties would be --

17 MR. SLATER: Your Honor --

18 THE COURT: -- would be important to.

19 MR. SLATER: Well, Your Honor, those defendants also  
20 had, as we discussed a little bit before, independent  
21 obligations to confirm that the products were what they were  
22 selling, so there's -- they have liability input to this. We  
23 don't know what data they were provided by the defendants -- by  
24 these manufacturers. We assume they were provided information  
25 about testing and confirming that the products were what they

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1       were supposed to be. And I know the way that things have gone  
2       we focused on the manufacturers because that's where the  
3       contamination originated.

4                 However, as this case develops, it may very well be  
5       that there's going to become sharp demarcations between some of  
6       these defendants to the point where they're going to be not on  
7       the same page at all, that there's going to be significant  
8       disputes as between and among one -- one another.

9                 And ultimately to the extent that there's going to be  
10      either judgments or resolutions, there's -- there's a  
11      possibility that these downstream defendants like the retailers  
12      may end of paying significant portions of any judgment  
13      depending on what access we can -- we can get to with some of  
14      the other defendants.

15                I mean, those issues I mentioned at a prior  
16      conference. We don't know how that's going to play out but  
17      we're certainly -- we're going to -- if the point comes to that  
18      payment of judgments, et cetera, we're going to be pursuing  
19      those entities where we can actually get paid with the least  
20      amount of heartache.

21                THE COURT: I understand. But what I'm saying is  
22      when it comes to Rule 34 document requests directed to the  
23      other two categories, the Court is going to sharpen its pencil  
24      very sharp. It will only permit directed specific relevant  
25      document requests which the Court expects will not nearly be as

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1 extensive and burdensome as the request directed to the  
2 manufacturing defendants, so we'll work out a schedule for  
3 that. There will be Rule 34 requests, but as I said, the Court  
4 is going to sharpen the pencil very sharp.

5 Let's -- let's move on to the next issues. I'm not  
6 sure what we have to discuss about the macro discovery issues  
7 except I would make this one general comment. I think we have  
8 reached the point in 2019 -- almost 2020, given the  
9 sophistication of counsel, their experience and the complexity  
10 of this litigation, that we should not be dealing with  
11 boilerplate objections to discovery.

12 And if a burdensome objection is made without any  
13 supporting evidence, that's a boilerplate objection. Everybody  
14 knows what a boilerplate objection is. I just think we're past  
15 the point where we have to deal with that issue.

16 And I would just suggest -- ask the defendants if  
17 they can go back and look at their answers/objections and if  
18 you want to supplement and clarify, do it because we should not  
19 be dealing with those types of issues in this sophisticated  
20 type of litigation with the sophisticated parties and attorneys  
21 we have in this case. That's all I have to say about the macro  
22 issues. Anybody else have any macro issues --

23 MR. GOLDBERG: Your Honor --

24 THE COURT: -- they want to address?

25 MR. GOLDBERG: -- yeah, this is Seth Goldberg. I do

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1 just want to address that issue, Your Honor, that you raised  
2 it. The defendants have agreed with plaintiffs, we had a meet  
3 and confer on Monday and we have agreed to provide revised  
4 objections --

5 THE COURT: Fantastic.

6 MR. GOLDBERG: -- objections to the document  
7 requests --

8 THE COURT: Fantastic.

9 MR. GOLDBERG: -- and, you know, our hope is that  
10 they will be satisfactory so the Court does not have to --

11 THE COURT: Fantastic.

12 MR. GOLDBERG: -- you know, wrestle with these  
13 issues. And we -- you know, we intend to get them to  
14 plaintiffs next week.

15 THE COURT: Fantastic. I much appreciate it and not  
16 surprising given the caliber of counsel in this case. Anything  
17 else regarding the macro issues?

18 (Pause in proceedings)

19 THE COURT: Okay, great. On the ongoing meet and  
20 confer process, all I can say is I just strongly encourage you  
21 to talk as much as you can. I'm not one who thinks just  
22 because you have a discovery dispute, parties are acting in bad  
23 faith. I know there's good faith discovery disputes. We'll  
24 spend all day and night resolving any good faith discovery  
25 dispute you want. Just try and exhaust your efforts to try and

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1 work it out, and if you can't we'll deal with it. That's all I  
2 have to say about the -- the meet and confer process.

3 I would just add -- let me just add one comment. For  
4 those of you -- everyone except Mr. Goldberg wasn't at the  
5 meeting we had with ZHP. I'm not going to reveal any  
6 confidences obviously. I can only tell you from my  
7 perspective, I thought it was tremendously helpful.

8 Maybe, maybe not, plaintiff didn't get all the  
9 information they wished they got, but it certainly clarified a  
10 lot of the basic issues. There was no harm, no foul.  
11 Everything went smoothly. So I would encourage the defendants  
12 if -- if they have a knowledgeable ESI person or IT person,  
13 it's not the worst thing in the world to sit down informally  
14 with plaintiffs.

15 If you're worried, do it here at the courthouse, I'll  
16 make myself available for the meeting if in case you're worried  
17 about that. I think it was tremendously beneficial ZHP stepped  
18 up to the plate in good faith and I just think it advanced the  
19 ball tremendously in the case. That's all I have to say about  
20 the meet and confer ESI topics. Anything else anybody else  
21 have?

22 MR. GOLDBERG: Yeah, Your Honor, this is -- this is  
23 Seth Goldberg. I just wanted to raise something because, you  
24 know, in looking at some of these issues that have been raised  
25 and in particular that when we talk about ESI, one of the

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1 things that hasn't happened I think across the board, although  
2 I haven't been at each meet and confer but it's based on my  
3 understanding with my -- with my defendant colleagues, is that  
4 while defendants have proposed lists of ESI custodians, there  
5 has been no agreement on the lists of ESI custodians.

6 And for -- for many of the defendants, plaintiffs  
7 have not provided responses with, and even with respect to the  
8 ZHP, while we appeared in Your Honor's courtroom a few weeks  
9 ago to talk about ESI discovery, we still have no list from  
10 plaintiffs about what they think the right ESI custodians are.

11 And to the extent that plaintiffs want us to do -- do  
12 work around ESI and search for -- for documents and build  
13 document databases, it's very hard to do unless we have an  
14 agreed upon list of ESI custodians.

15 And, you know, defendants are -- have proposed their  
16 ESI custodians, have supplemented those lists and have not  
17 heard back from plaintiffs and there has not yet been  
18 agreements as to ESI custodian lists and I would -- I think it  
19 would be helpful to this process if plaintiffs could -- could  
20 provide that information, provide who they think the ESI  
21 custodians should be.

22 Because what I don't want to have happen is later in  
23 November, there be lists -- very long lists of ESI custodians  
24 proposed by plaintiffs and because of a lack of time, the Court  
25 -- because of the lack of time to negotiate about plaintiffs'

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1 proposals, defendants are stuck responding to very long lists  
2 of ESI custodians.

3 THE COURT: Mr. Slater, could you speak to that?

4 MR. SLATER: Your Honor, it's hard to --

5 THE COURT: -- I certainly think --

6 MR. SLATER: -- understand where that's coming from.

7 The process is ongoing. We're trying to learn all the names of  
8 the people that are going to matter. As much as we're trying,  
9 we -- you know, we put it on a letter to be very frank with the  
10 Court, in my experience I'm pretty confident that as we start  
11 to see the documents and as we start to take depositions, that  
12 we're going to find out about people that were never disclosed  
13 to us.

14 I think that's going to happen here and we're doing  
15 the best we can. I don't know why Mr. Goldberg is asking for a  
16 list right now. They've been giving us names, we've been  
17 giving them names. As he said, he's not involved in the meet  
18 and confers having to do with the other defendants so he hasn't  
19 been there.

20 But both sides are trying to I assume work as hard as  
21 we can to try to compile those lists. That's the process we're  
22 in right now, so the lists aren't done because we're in the  
23 meet and confer process. I mean, I suppose if he wants we can  
24 send him a list of the names that we know, but he knows the  
25 same list we know within the names from him and we've told him

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1 the names that we have and asked about all those people as Your  
2 Honor, you know -- you know, we've done name after name after  
3 name, so we're -- we're doing the best we can to define the  
4 list.

5 THE COURT: Well, it's not just a one-way street,  
6 defendants to plaintiffs. I'm not intimately aware obviously  
7 of what you've exchanged and not exchanged, but it has to be a  
8 two-way street. Plaintiffs exchange names, defendants exchange  
9 names, you talk, some are added, some are subtracted.

10 But Mr. Goldberg seems to be saying that the  
11 defendants, it would be helpful to them if they just had some  
12 preliminary idea of who plaintiff is thinking of. I mean,  
13 after all, by November 20 you're going to send your letters to  
14 the Court, that's only two weeks away.

15 MR. SLATER: Yeah. No, I don't disagree. I mean,  
16 we're still waiting for things. For example, to my knowledge  
17 and Mr. Goldberg can correct me -- correct me if he wants, I  
18 don't think we have -- even have the English translations of  
19 those Chinese org charts that we were discussing when we  
20 appeared in Court for that meeting.

21 My understanding is though we were promised they were  
22 coming, we still don't have them so, you know, if they want us  
23 to send the list, I mean, we're compiling custodian lists.  
24 We're doing it in concert with the defense, but we can send  
25 them those lists next week. It's not a problem. You know, I'm

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1 not in every one of the meet and confers either. My  
2 understanding is our team has been disclosing the names they  
3 know and have been running them by the defense, so I don't  
4 think there's going to be a lot of surprises. But, I mean, we  
5 can send them the lists that we have as of next week. That's  
6 no problem.

7 THE COURT: Thanks. Appreciate it.

8 MR. SLATER: Thank you. But ultimately if they're  
9 very important but, you know, again Mr. Goldberg can correct me  
10 if I'm wrong, but if I'm right that they haven't even given us  
11 the translated organizational charts, you know, he still has 24  
12 teeth to pull out of the mouth and we're getting maybe one  
13 halfway out at this point.

14 MR. GOLDBERG: Yes, you're correct, we haven't  
15 provided those organizational charts in English. You've had  
16 them and we can provide them. We've been dealing with some  
17 other things in this case. But the point is that for none of  
18 the other defendants and not ZHP, I -- I think what you have is  
19 longs lists of ESI custodians that you haven't provided to  
20 defendants, and that is going to make the process very  
21 difficult if those long lists are produced to us much later in  
22 November and --

23 THE COURT: You'll get that --

24 MR. GOLDBERG: -- we will --

25 THE COURT: You'll get that next week. You'll get

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1       that next week, Mr. --

2                    MR. SLATER: Yeah, one -- one comment. I don't know  
3        -- I don't know if Mr. Goldberg thinks that we have some long  
4        secret list that we're holding back, but I think that it's very  
5        important, Judge, to put -- put our finger on what just  
6        happened because Mr. Goldberg initiated a discussion saying I  
7        want their list of custodians now, and then in the side comment  
8        says yeah, you're right, we didn't give you the translated org  
9        charts yet.

10          I mean, this is such fundamental information and we  
11        don't have org charts from all the defendants, we don't have  
12        completed ones. We have ZHP saying we'll find you those  
13        charts, then he says well, we'll get around to it but we've  
14        been busy, when they promised, Your Honor, multiple times going  
15        back weeks and weeks that they would be promptly produced and  
16        they haven't been.

17          I think that if we're going to be pushed like this,  
18        then there should be an order that we get those translated org  
19        charts -- complete org charts from all the defendants. No more  
20        they keep falling out of the tree three weeks or three months  
21        from now, you know, in the next couple days.

22          I mean, we're doing the best we can but -- but for  
23        Mr. Goldberg to sit there and stridently say we're holding back  
24        long lists -- which we're not, while he's not even giving us  
25        translated organizational charts is -- is very problematic and

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1 it's -- and I think it shows a strategy and I think and I think  
2 it's emblematic of a lot of what's been going on, especially  
3 with ZHP in discovery in this case.

4 And I would ask for the Court to direct them to  
5 produce all of the org charts in the next couple days fully  
6 translated. They've had plenty of time. They've promised this  
7 to the Court multiple times and I think that it's really,  
8 really -- it's on the borderline of outrageous for counsel to  
9 make that demand to the Court just now while they won't even in  
10 good faith get us the org charts in English.

11 THE COURT: Okay, we're going to -- we're going to  
12 move on but I'll cover the org charts in the order to be  
13 entered.

14 The next issue is the short form complaints. I think  
15 we're on the same page on that. There's absolutely no question  
16 that we have to do it according to the order, we have to do it  
17 so that the statistics and tallies can be appropriately added  
18 up or compiled.

19 The only -- the thought that occurred to me, Mr.  
20 Goldberg, was if we knew the complaints or docket numbers of  
21 the case -- cases that have to do it the right way, we're happy  
22 to enter an order requiring them to do it by X date, and if  
23 they don't do it, we'll issue an order to show cause and if  
24 they don't do it, the case will be dismissed. So is it  
25 possible to just send me a list? Can someone put together a

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1 list --

2 MR. GOLDBERG: Yes.

3 THE COURT: -- of the docket numbers that have to be  
4 done the right way?

5 MR. GOLDBERG: Yeah, I believe we can get that to you  
6 this week, Your Honor.

7 THE COURT: Okay. And I'm sure the plaintiffs'  
8 counsel, now being on notice of the issue, will -- will notify  
9 their group that there's no debate that these filings have to  
10 be done in accordance with the order so we can keep track of  
11 all the cases.

12 We're only talking about a hundred or so cases now  
13 and in theory, we might be talking about ten, 20 times that  
14 amount, so we'd better get it right at the beginning or else  
15 we'll pay the price down the road. So I'll wait for that list,  
16 Mr. Goldberg, and we'll enter the order.

17 MR. GOLDBERG: Thank you.

18 MR. SLATER: And, Judge, we agree. So if -- Mr.  
19 Goldberg, if you want to send us the list of those cases  
20 especially and identify for us a particular law firm, we can  
21 then reach out in our liaison capacity and speak to these firms  
22 directly to try to give them a kick to make sure they do what  
23 they're supposed to do as well.

24 MR. GOLDBERG: Absolutely.

25 THE COURT: Okay, thank you. And then the last issue

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1       on the agenda is the April 29 request for information. I'm not  
2       sure what the Court needs to do on this except I assume this is  
3       just part of the parties' meet and confer discussions.

4                   MR. SLATER: Judge, I think what -- frankly we're  
5       going to need is for the Court to order the defense to actually  
6       meet and confer on this and actually start to give up  
7       information, because they've essentially refused to. And if  
8       you just looked at their letter, they said we'll give  
9       information to the plaintiffs when we determine that we -- that  
10      they need it or when we feel like giving it to them.

11                  I'm paraphrasing, but we had a very, very robust meet  
12       and confer in the Benicar litigation which spanned many  
13       conference calls and you actually ordered us to get in person  
14       into a conference room with our IT tech consultant so that we  
15       could talk through the detailed issues that needed to be  
16       addressed so that the document production could actually be set  
17       up before it starts rolling out. And from all indications from  
18       the defense, they don't want to do this. They keep telling us  
19       it's -- it's premature.

20                  THE COURT: No.

21                  MR. SLATER: You know, we don't even --

22                  THE COURT: No.

23                  MR. SLATER: -- we don't even have -- we don't even  
24       know if they have (inaudible). I think contained in an email  
25       the other day they have not yet even started doing any testing

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1 of search terms. They haven't done any work on that which puts  
2 them months and month behind where that issue was in the other  
3 litigation and if they're really not testing yet and they're  
4 not able to even give up information about their platforms and  
5 servers, et cetera, when -- when it's ready for the documents  
6 to roll out, we're going to have all sorts of issues.

7 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I  
8 mean, a couple of things. This really -- the last point really  
9 gets to this issue about the fact that we haven't reached  
10 agreement on ESI custodians and plaintiffs want there to be  
11 testing, want there to be work done on the ESI --

12 (Automated attendant announces someone has left the  
13 conference)

14 MR. GOLDBERG: -- but there -- there isn't even  
15 agreement on the custodians that have been proposed. And to  
16 start doing testing without a list of ESI custodians would  
17 require -- would result in a piecemeal process for defendants  
18 and a very costly one, and -- and Mr. Slater is not being  
19 truthful with respect to the reference to the letter that we  
20 sent.

21 We have not only discussed different categories of  
22 ESI during the individual meet and confers, but we've agreed to  
23 produce or discuss six categories which are fairly broad as  
24 part of this process and to provide information about TAR (ph)  
25 and predictive coding, about vendors, about non-company

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1 computers and devices, about backup storage and archiving,  
2 about network servers, and about email messaging and  
3 communication.

4 This is -- this is a -- this is a process. We have  
5 by -- by and large, this is an individual defendant process.  
6 Some of this was discussed with Mr. Duke (phonetic) for ZHP  
7 before Your Honor, and the process is underway. I do think if  
8 we can get to a place where we have some agreement on ESI  
9 custodians, the process will be enhanced.

10 THE COURT: Can I ask this question? Mr. Slater, are  
11 we talking about the individual API and finished dose  
12 manufacturing defendants?

13 MR. SLATER: At this point we are because that's  
14 how --

15 THE COURT: Right.

16 MR. SLATER: -- because that's how we've been  
17 staging --

18 THE COURT: Right.

19 MR. SLATER: -- the discussion.

20 THE COURT: All right, what I'm going to do is I  
21 don't think this is the most productive way to do this is by  
22 letters or emails or phone calls, I'm going to order an in-  
23 person meeting of the -- even if it's just the attorneys by the  
24 November 15th, so that's nine days or so, because the letters  
25 to the Court are due the 27th. So I don't have to tell you

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1 that meeting in person is the best way to do it.

2 I'm going to look at the local rule whether to  
3 require a knowledgeable IT person to be there, but the local  
4 rules require that everyone identify the IT person who has the  
5 most knowledge regarding blah, blah, blah, blah, blah, blah.  
6 So the parties are going to meet -- you don't have to meet  
7 here, you can meet in a law office, but of course we'll make  
8 facilities available.

9 But I agree with Mr. Slater that you just have to sit  
10 down over a conference room table and -- and do this because  
11 it's just too cumbersome to do it given a case like this over  
12 the phone or by email, so I'll put that in the order. Are  
13 there any other issues we want to address?

14 Okay, I think the next time we're going to get  
15 together in person is the 20th. We're going to have oral  
16 argument on the macro issues. If there's any other issues we  
17 need to address while we're together we'll do it, and if  
18 there's nothing else, this matter is adjourned. Thank you,  
19 counsel.

20 ALL COUNSEL: Thank you, Judge.

21 (Proceedings concluded, 5:00 p.m.)

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## C E R T I F I C A T I O N

3 I, Diane Gallagher, court approved transcriber,  
4 certify that the foregoing is a correct transcript from the  
5 official electronic sound recording of the proceedings in the  
6 above-entitled matter.

9 DIANE GALLAGHER

DATE

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